

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

CASSANDRA SIMON, SYDNEY TESTMAN,
MIGUEL LUNA, ISABELLA CAMPOS,
DANA PATTON, RICHARD FORDING AND
THE ALABAMA STATE CONFERENCE OF
THE NAACP,

Plaintiffs,

vs.

KAY IVEY in her official capacity as
Governor of Alabama and President Ex-Officio
of the University of Alabama Board of Trustees,
SCOTT PHELPS in his official capacity as
President Pro Tempore University of Alabama
Board of Trustees, MIKE BROCK, KAREN
BROOKS, MYLA E. CALHOUN, RONALD
GRAY, JEFF GRONBERG,
O.B. GRAYSON HALL, JR., BARBARA
HUMPHREY, W. DAVIS MALONE III,
EVELYN VANSANT MAULDIN, HARRIS
MORRISSETTE, J. STEVEN ROY,
KENNETH SIMON, MARIETTA
URQUHART AND KENNETH
VANDERVOORT in their official capacities as
members of the University of Alabama Board of
Trustees

Defendants.

Case No. 2:25-cv-00067-RDP

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF THE BOARD
DEFENDANTS' POST-HEARING BRIEF IN OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

In their post-hearing briefs, the Parties set forth arguments regarding the Board's position that even if SB 129 is ruled unconstitutional, it would not be prudent for the Board to reopen or reinstate the Black Student Union and Safe Zone offices in the UA Student Center, UA's Division of Diversity, Equity and Inclusion, UAB's Office of Diversity, Equity, and Inclusion, and UAB's

Student Multicultural and Diversity Programs office. (Doc. 74 at p. 19, 39-41); (Doc. 75 at p. 42-47). *See also* (Doc. 74-1). On July 29, 2025—less than a week after the Parties submitted their briefs—the Department of Justice issued a new guidance memorandum titled *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination*. (Attached hereto as Exhibit A). The guidance “clarifies the application of federal antidiscrimination laws to programs or initiatives that may involve discriminatory practices, including those labeled as Diversity, Equity, and Inclusion programs.” *Id.* at 1. This new guidance speaks directly to the Board’s concerns about reopening or reinstating the offices and programs listed above. For example, the guidance states that it would be an unlawful practice for “[a] university’s DEI initiative [to designate] a ‘safe space’ or lounge exclusively for students of a specific racial or ethnic group,” *id.* at 4, and that “[e]ven if access is technically open to all, the identity-based focus creates a perception of segregation and may foster a hostile environment” in violation of federal antidiscrimination laws, *id.* at 6.

Respectfully submitted this 5th day of August, 2025.

/s/ Jay M. Ezelle

Jay M. Ezelle (ASB-4744-Z72J)
 Cole R. Gresham (ASB-8993-L74G)
 Samuel A. Cochran (ASB-1354-R84D)
 STARNES DAVIS FLORIE LLP
 100 Brookwood Place, 7th Floor
 Birmingham, Alabama 35209
 Telephone: (205) 868-6000
jezelle@starneslaw.com
cgresham@starneslaw.com
scochran@starneslaw.com

Counsel for the Board Defendants